

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**



74-2446

To be argued by  
ABRAHAM SOLOMON

B  
MS

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

----- X

UNITED STATES OF AMERICA :

Plaintiff-Appellee :

-against- :

74 Cr. 687

JOSEPHUS ETHERIDGE :

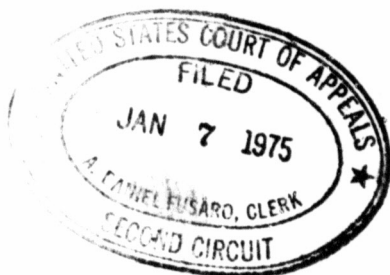
Defendant-Appellant :

----- X

*4 Appends*

BRIEF FOR DEFENDANT-APPELLANT

Appeal From A Judgment of  
Conviction Rendered in The  
United States District Court  
For the Southern District of New York



*Abraham Solomon*

ABRAHAM SOLOMON  
Attorney for Defendant-Appellant  
85 Baxter Street  
New York, New York

**PAGINATION AS IN ORIGINAL COPY**



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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

- - - - -X

UNITED STATES OF AMERICA :

Plaintiff-Appellee :

-against- :

JOSEPHUS ETHERIDGE :

Defendant-Appellant :

- - - - -X

BRIEF FOR APPELLANT

On appeal from a Judgment of the  
United States District Court for  
the Southern District of New York.

Preliminary Statement

This is an appeal by the defendant-appellant, above-named,  
from his conviction, after a trial by a jury, held in the United  
States District Court, Southern District of New York, on  
September 19, and 20, 1974 as follows: that he did violate  
Title 18, United States Code, Section 495 thereof to wit:

Count One of the Indictment

That on or about the 18th day of April 1973, in the Southern  
District of New York, the defendant above-named, unlawfully,  
wilfully and knowingly and with intent to defraud the United  
States did utter and publish as true and did cause to be uttered

and published as true a false, forged and counterfeited writing namely, the endorsement of the payee on a United States Treasurer's check, knowing the same to be false, forged and counterfeited, the check being that described in Count one of this indictment.

#### Statutes Involved

Whoever utters or publishes as true any such false, forged, altered or counterfeited writing with intent to defraud the United States, knowing the same to be false, altered or counterfeited, shall be fined not more than \$1000 or imprisoned not more than ten years or both.

Title 18 Section 495

#### COUNT ONE

The Grand Jury charges:

On or about the 18th day of April, 1973, in the Southern District of New York, JOSEPHUS ETHERIDGE, the defendant, unlawfully, wilfully and knowingly did falsely make, alter, forge and counterfeit, and cause to be made, forged and counterfeited a writing, namely, the endorsement of the payee on a United States Treasurer's check, to wit, the words "Delphine Rhodes" on the back thereof, for the purpose of obtaining and enabling another person, either directly or

indirectly to obtain from the United States and its officers and agents a sum of money, the check being a genuine obligation of the United States, and of the following tenor:

(Title 18, United States Code, Section 495).

COUNT TWO

The **Grand** Jury further charges:

On or about the 18th day of April, 1973, in the Southern District of New York, JOSEPHUS ETHERIDGE, the defendant, unlawfully wilfully and knowingly and with intent to defraud the United States, did utter and publish as true and did cause to be uttered and published as true a false, forged and counterfeited writing, namely, the endorsement of the payee on a United States Treasurer's check, knowing the same to false forged and counterfeited, the check being that described in Count One of this Indictment.

(Title 18, United States Code, Section 495).

The defendant was found guilty on Count two (2); Not Guilty on Count one (1). Both counts of the indictment are included herein to indicate that the guilty verdict on Count two (2) referred to the check described in Count one thereof.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

- - - - - X

UNITED STATES OF AMERICA :

Plaintiff-Appellee :

-against- :

JOSEPHUS ETHERIDGE :

Defendant-Appellant :

- - - - - X

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF NEW YORK )

ABRAHAM SOLOMON, being duly sworn, deposes and says:

He was duly assigned by this Court to prosecute the  
appeal herein.

He was also trial counsel in the United States District  
Court of New York by assignment.

He makes this affidavit in support of the conclusion  
arrived at, based on a complete and thorough analysis of the  
testimony adduced at the trial; of the charge by the Court  
and all of the exhibits offered as evidence herein; also the  
law applicable to the said charges.

The record does not present any non-frivolous issue  
or issues. There were two (2) counts- Count 1 charged that  
the defendant did falsely make, alter, forge and counterfeit

an endorsement of a government check. On this count the defendant was acquitted.

Count 2 charged that the defendant uttered and published as true the check mentioned in Count 1. On this charge he was convicted. I am certain that on the testimony in this case, it being one of fact, the jury's verdict could well be sustained and I so state.

Sworn to before me this

6<sup>th</sup> day of January 1975  
Inez Babb

INEZ BABB  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 24-6122040  
Qualified in Kings County  
Commission Expires March 30, 1975

Analysis of Testimony

The government called one Peter Raiano as a witness, who testified substantially as follows:

He is employed by the Third Avenue Check Cashing Corporation located at 1202 Elder Avenue; has been so employed three years; he knows the defendant Josephus Etheridge (s.m. P 11-12)\*; he identifies the defendant. He knew him since 1962-

---

\* Indicates stenographer minutes

they went to Junior High School together. He also lived in the same housing project with the defendant. (s.m. P 12-13) On April 18, 1973 he saw the defendant in the Third Avenue Check Cashing premises. He was alone. At that time he wanted to cash a check. (s.m. P 13-14)

The witness asked the defendant for identification. The defendant produced a card with his picture from Albert Einstein hospital and a social security card. He then proceeded to fill out a card for their files, said card included the defendant's name and address. The defendant signed the card with the name, Delphine B. Rhodes. (s.m. p 20-22) He then cashed the check and gave the defendant money. Defendant took the money and left. (s.m. P 20-23)

On September 21, 1973 he again saw the defendant at 1202 Elder Avenue in the Bronx. At that time there was another employee present. He offered a check for me to cash. (s.m. p 25)

Government Exhibit 3 is the check that was offered. The check was payable to Delphine Rhodes. At that time he (witness) knew that the first check had been returned by the bank as a forgery. (s.m. p 26)

When Exhibit 3 was presented to him he made a phone call.

While on the phone he picked up a camera and set it on top of the counter-he took pictures of the check and the



defendant while defendant was standing at the counter.

Government exhibits 4A-4B and 4E are the pictures just referred to; he recognizes the picture in said photograph to be that of the defendant. (s.m. P 28)

He then made another call and then told the defendant he could not cash the check until he got the okay from his supervisor. The defendant then turned around, leaving the check in the store, walked out, turned toward Westchester Avenue and ran.

#### Cross Examination

The witness reiterated that he saw the defendant write the name on Government's Exhibit I. (s.m. P 33) He further testified that he could not recall whether the endorsement on the check was already there or made in his presence. (s.m. P 34) He further testified that he recalls the incident that occurred on September 21st, 1973. The defendant did not receive any money on that day. (s.m. P 35)

Roy D. Nedrow, called as a witness by the Government testified substantially as follows:

He is a Special Agent with the United States Secret Service. He knows the defendant and identified him. (s.m. P 39) The witness identifies Government exhibit No. I as a certified photocopy of a government check.



MR. SOLOMON: May I have the date?

MR. SUSSMAN: February 6, 1974.

A He asked me if he could take another look at the check, the Delphine Rhodes check and I handed him the photocopy. He looked at it again and told me that he had made a mistake, that contrary to the oral statement he had given me earlier and contrary to his written statement, upon reflection he had decided that he had not signed the name Delphine Rhodes to the reverse of the check.

I asked him how this could have occurred, this error in his judgment and he said that he didn't really get a chance to look at the signature on the back of the check until that particular moment but now he was positive that he had not signed the name of Delphine Rhodes; that it was signed when he took it into the check cashers on Elder Avenue, but he hadn't actually done the signature.

Q Did there come a time thereafter on February 6, 1974, when the defendant was interviewed in your presence by an Assistant United States Attorney?

A Yes.

Q Will you please tell us what the Assistant United States Attorney said and what the defendant said during the course of that interview?

A The Assistant United States Attorney introduced himself to Mr. Etheridge. He advised him of his constitutional rights to remain silent. He advised him again that anything he said could be used against him. He was again advised of his right to have an attorney present and if he could not afford one, one would be appointed for him by the court and he was advised if he started a conversation, he could conclude it at any time he wished. There was no obligation for him to continue talking.

The United States Attorney asked him several questions regarding his background, of a biographical nature.

He was asked questions how he was treated by the agent, whether he was advised of his rights previous to coming to the attention of the U.S. Attorney and then asked him the story behind the Delphine Rhodes check.

Q Which Delphine Rhodes check, Exhibit 1?

A That is correct, the photostatic copy.

Q Go ahead.

A Mr. Etheridge informed him how he had obtained the check, where he had obtained the check, where he had cashed the check and how he had gotten the identification for the check exactly as he told me during the oral

con conversation and during the conversation in which I was taking a statement.

He did, however, tell the United States Attorney he was not responsible for the forgery of the check as he had told me on the last discussion at our office prior to coming over to the courtroom. He told me that he had been in error when he talked to me -- he told the U.S. Attorney; that in fact he had not been responsible for signing the payee's name on the check when he had gone into the Third Avenue Check Cashers, the check had already been signed and he had not signed anything on the back of the check when he cashed it.

Q Agent Nedrow, did you have occasion in the course of your investigation to have a handwriting analysis done on a hearing that the defendant gave you samples of and the handwriting that appears on the back of the check? Was it reported to you that the examination by experts failed to provide an expert for identifying Josephus Etheridge as the writer of the endorsement on the check Exhibit 1?

A That was the report.

Q Did you also have a fingerprinting analysis done of Government's Exhibit 1?

A Yes

Q Was it reported to you by the experts that no

latent prints suitable for identification purposes were developed on that check?

A Yes, that was the report.

#### Cross-Examination

The handwriting report as to Government Exhibit 1 was inconclusive. They could not say whether or not Mr. Etheridge was the author of the questioned writing.

This report came from the Secret Service handwriting laboratory in Washington, D.C. There was also a finger print analysis of Government Exhibit 1. (s.m. P 53) It was reported by the experts that no latent prints suitable for identification purposes were developed on that check. That was the report. (s.m. P 52)

#### Defense

Josephus Etheridge called as a witness in his own behalf testified substantially as follows:

He was born in 1948. Attended Junior High School 125 in the Bronx; from there he went to James Monroe High School; he then attended junior college at West Point and Oklahoma Military Academy for one (1) year. He then transferred to Atlanta University, Clark College and there applied to Case Western Law School for admission. He works with the Youth Gangs

in the Bronx. It is a State Program involved with the rehabilitation of youths in criminal activities. (s.m. P 65) He did not take Government Exhibit 1 into the check cashing agency and did not endorse the payee's name. (s.m. P 66-67) It is not his signature nor his handwiring. He did not write the payee's name that appears on Exhibit 1. (s.m. P 67) He further testified that he did not present Government Exhibit 3 on or about September 21, 1973 to the check cashing gentlemen for cashing purposes.

He did not endorse said check. Government Exhibit 6 is read by the defendant.

The defendant then testified that the statements he made in Government Exhibit 6 are not true. (s.m. P 71)

He further testified:

Q At the time that you made these statements, will you explain to this court and jury what the circumstances were surrounding the conversation between you and Mr. Nedrow and your answers?

A I would like to first relate the incident to the check in question of the picture which in reference to the check, the picture of me right there.

During the time that I could recall of my total recollection that that picture was taken, there were a group of us from the Bronx in there. The gentlemen who

testified whose name is Pete, knows me. Everybody was in there cashing checks, girls, everything. While they were in there, a young lady happened to get into an argument with him, a dispute about a check. This is the best I can recollect how my picture got on there. She had left and when I approached there he asked me did I know her and I said yes, I did.

Q Are you referring to Government's Exhibit 2?

A I am referring to that one. He said he reached under and pulled up a camera and evidently he snapped the photo.

Time went on. After about nine months and I had never saw neither one of these checks before until I was left a card by an agent that I was supposed to appear.

I came down and I was first confronted with a picture of myself showing me and he said is that your picture and I said yes. The name on that check is Delphine R. Rhodes. He then showed me another government check asking me how many more did I cash and I am telling him I never seen either one of these and the questions he is putting to me and he is saying if you cooperate, you might be able to do what you are doing later on that evening.

While I am in there, I see he is not going to



give me not slack either way, no leeway and he started plying questions to me. While he was asking me, that typewritten statement was construed in his ways. I knew if I didn't cooperate with them, I would be put and placed in jail and possible with a bail which I had no money. I did sign that statement. I made it up because that is the only way I figured to get out of there. I went to the U.S. Attorney, the same thing happened.

During the course of this time, I say to myself that Pete, why wait nine months to bring a case when he knew that wasn't me that passed that check. He knew that in order for that to be there, that a card had to be already on there with that signature and that is why it came back from Washington that my signature and everything doesn't match and he never took a photo of me because I was never in there with either one of those checks and that is why the girls I had, the total recall, it took him nine months to see. I am the one that has the picture and I might know her through him-

MR. SUSSMAN: Your Honor, this has gone on a very long time, this narrative and we would like to not object if we possibly can but at a point I have to make an objection.

THE COURT: I will allow it.

Have you finished your answer?

THE WITNESS: yes.

He further testified that he had a conversation in the Court house with an Assistant United States Attorney (s.m. P 74)

THE COURT: You recall having a conversation with some Assistant?

THE WITNESS: Yes

THE COURT: You don't know his name?

Q You recall that took place in this building?

A Yes.

Q And do you recall that that Assistant, whoever it was, I don't know myself, asked you certain questions and you gave him substantially the same type of answers that you gave to Mr. Nedrow?

A I did.

Q You also say that wasn't true?

A Yes.

Q But you continued that deception because of the reasons you explained?

A Yes.

Q Referring to Government's Exhibit 3. Were you in this check cashing agency on September 21, 1973?

74-0464

A I was.

Q Were you standing in the line with other people?

A Yes, I was.

Q Will you explain to his Honor and the ladies and gentlemen of the jury, what occurred at the time that you were standing there in the line?

A The line was long. There were people getting paid and people was passing me checks. I know Petey because I cash my own checks there, my own name and he knows me through basketball. I am well known. He has to know me because we grew up together. He and the girl or lady was in a dispute. Being a counselor for youth gangs, I tried to intervene. He looked up and asked me if I knew her and I said I know her. She left stating like she was going to get ID which left it right there on the counter and I guess he figured, he might have figured she was in a group with me and my photo was taken. When it was shown to me, that is when I remembered that that must have been the only time that that incident happened, that occurred and that is how i got to the point about the handwriting and the card in there, there never was one, because they do have a policy in a check cashing place, if you don't have the proper identification, you sign it twice in front of him

and if you do have it, you have to have a card in there anyway and if it is a woman's name, it would have male or female and what type of material was done on what transaction.

Looking at it logically, if one was in there, he must have done it because a government check the ID, no ID, you could make up and laminate and put your picture in there. It has to sufficient. It is not just enough you could present -- that is the only way and that is the way they put it that way. I might know and through me questions were asked and I said I did know, so I was pressured into this situation.

MR. SOLOMON: Your witness.

Cross-Examination

He did not go to law school. (s.m. P 78) He admits signing Government Exhibit 6. The statement was prepared in the manner testified to by Agent Nedrow. (s.m. P 83) He complained to Agent Nedrow that he, the Agent, was putting words in his mouth. He typed I never wrote anything. (s.m. P 86) He was interviewed by an Assistant United States Attorney. He was warned of his rights. He stated that he understood all of his rights. He then admitted in the statement that he

cashed the check but denied that he signed it. (s.m. P 88)

That all this refers to Government Exhibit "6".

Q The statement you have in front of you, Exhibit 6, says you signed it and you cashed it, right?

A Yes.

Q But you decided you didn't sign it, you just cashed it, that is what you told him?

A He said it doesn't make a difference what you do, we are going to get you either one. That is what the U.S. Attorney said. You are not getting out of nothing. I started getting angry and I had no alternative.

He further testified he never signed Government Exhibit 1. He never cashed it on April 18th, 1973 or on any other day. He never signed Government Exhinit 2.

This concluded the cross-examination and the trial testimony.

#### Statement of Possible Legal Issues

Q. Was the evidence adduced at the trial by the Government sufficient to have been submitted for its consideration?

A. Yes.

Q. Did the Court in its charge particularly explain to the Jury all of the elements essential that the Government must prove in order to establish his guilt beyond a reasonable doubt?

A. Yes.

Q. Did the Court explain to the Jury the difference between the two Counts and what the proof must be as to each.

A. Yes.

Charge to the Jury

No exception was taken to the charge or any part thereof. (s.m. P 130)

Court's Comment

"Well, they didn't believe you, Mr. Etheridge, and they were unanimously convinced beyond a reasonable doubt that you were guilty."

"I think I ought to tell you man to man, for what it is worth, that I didn't believe you either, and I would have convicted you too!"

...Now, I don't really have to retry that because that is the jury's business, but I will tell you that I may well be influenced by my belief that you were lying when you were on the witness stand and that you are not being honest with the Court now." (s.m. P 138)

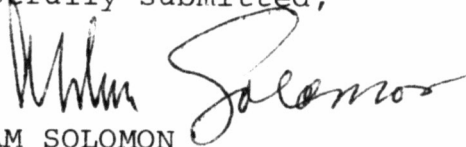
CONCLUSION

In the context of all the evidence, I have come to the

conclusion that there is no non-frivolous issue or issues  
herein to be raised before this Court.

This brief is filed pursuant to the decision in Anders  
v California, 386 U.S. 738 - which decision I have carefully  
read and believe that it applies herein.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Abraham Solomon', is written over the typed name.

ABRAHAM SOLOMON  
Attorney for Defendant  
85 Baxter Street  
New York, New York 10013

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

- - - - - X

UNITED STATES OF AMERICA :

Plaintiff-Appellee :

-against- :


74-2446

JOSEPHUS ETHERIDGE :

Defendant-Appellant :

- - - - - X

APPENDIX



ABRAHAM SOLOMON  
Attorney for Defendant-Appellant  
85 Baxter Street  
New York, New York 10013



UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

- - - - - X

UNITED STATES OF AMERICA :

Plaintiff-Appellee :

-against- :

JOSEPHUS ETHERIDGE :

Defendant-Appellant :

- - - - - X

1. Copy of Docket entries.
2. The Indictment
3. The charge to the Jury
- Opinion of the Court below.



Sent 11-21-1974

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

ONLY COPY AVAILABLE

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF  
NEW YORK.

U. S. A.

vs

Joseph E. Heridge

CASE NO. 74 Cr. 687

JUDGE MEF

INDEX TO THE RECORD ON APPEAL

DOCUMENTS

Certified copy of docket entries

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C. Form No. 100

CRIMINAL DOCKET

JUDGE FRANKEL

ONLY COPY AVAILABLE

74 CRIM. 687

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: 11-6-74
VS.	Richard Wile, AUSA.
JOSEPHUS ETHERIDGE	264-6432
	For Defendant:
	ABRAHAM SOLOMON
	85 Baxter Street, N.Y.C.
	1131-6512



ONLY COPY AVAILABLE

74 Cr. 687

.2.

Frankel, J.

DATE	PROCEEDINGS	CLERK'S FEES			
		PLAINTIFF		DEFENDANT	
6-74	JURY TRIAL BEGUN.....Frankel, J.				
6-74	Trial cont'd. & concluded. Not Guilty on Count 1 & GUILTY on Count 2. Deft moves to set aside the verdict - Denied. P.S.I. ordered. Sent. 11-6-74 at 10 a.m....Present bail conditions continued....Frankel, J.				
6-74	Filed notice of appeal from final judgment of 11-6-74..Copy given to U.S. Atty. and mailed to deft at 1460 Bronx River Ave. Bronx, N.Y. & Fed. Det. Ctr. NYC...Deft's motion to file appeal in forma pauperis granted..So. Ordered....Frankel, J.				

6-74, Filed Judgment(Atty.Abraham Solomon,present)the deft is committed for imprisonment for a period of THREE YEARS...Pursuant to Sec.3651, Ti. 18, U.S.Code, as amended, deft will be confined in a Jail Type Institution for a period of SIX MONTHS. The execution of the remainder of the sentence is suspended and deft is placed on probation for a period of TWO YEARS, to commence upon expiration of confinement, subject to the standing probation order of this Court...Deft is released on his own recognizance until Nov. 11, 1974 at 10:30 a.m., at which time he is to surrender to the U.S.Marshall in room 506.....Frankel, J...Ent. 11-7-74-----

15-74, FILED TRUE COPY OF JUDGMENT OF CONVICTION

*A. E. Thompson*

*B*

RM:lm  
74-0464  
n-543

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JOSEPHUS ETHERIDGE,

Defendant.

INDICTMENT

74 Cr.

W.G. 57  
Not Guilty Plea  
9/20/74

COUNT ONE

The Grand Jury charges:

On or about the 18th day of April, 1973, in the Southern District of New York, JOSEPHUS ETHERIDGE, the defendant, unlawfully, wilfully and knowingly did falsely make, alter, forge and counterfeit, and cause to be made, forged and counterfeited a writing, namely, the endorsement of the payee on a United States Treasurer's check, to wit, the words "Dolphine Rhodes" on the back thereof, for the purpose of obtaining and enabling another person, either directly or indirectly to obtain from the United States and its officers and agents a sum of money, the check being a genuine obligation of the United States, and of the following tenor:

\$4050 p. Luth



RW:lm  
74-0464  
n-543a

(Title 18, United States Code, Section 495).

COUNT TWO

The Grand Jury further charges:

On or about the 18th day of April, 1973, in the Southern District of New York, JOSEPHUS ETHERIDGE, the defendant, unlawfully, wilfully and knowingly and with intent to defraud the United States, did utter and publish as true and did cause to be uttered and published as true a false, forged and counterfeited writing, namely, the endorsement of the payee on a United States Treasurer's check, knowing the same to be false, forged and counterfeited, the check being that described in Count One of this Indictment.

(Title 18, United States Code, Section 495).

\_\_\_\_\_  
J. Edgar Hoover

\_\_\_\_\_  
J. Edgar Hoover  
United States Attorney

**United States District Court**  
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

*W. L.*  
*8/14/74*  
*Any*  
JOSEPHUS ETHERIDGE,

Defendant.

**INDICTMENT**

74 Cr.

(18 USC § 495)

PAUL J. CURRAN

United States Attorney.

A TRUE BILL

*/*  
Foreman.

rkh

115

## CHARGE OF THE COURT

(Frankel, J.)

THE COURT: Members of the jury, you have heard the evidence and you have heard the opposing views about what you should find from the evidence. This has been a short trial as trials go in this courthouse, but I don't think I need to dwell at length for you on the fact that it is an important trial. All trials are important. Perhaps criminal trials more than others. It is important to the defendant, obviously, it is important to the prosecution, the government, it is important to you and to me and our respective responsibilities representing the public interest in the administration of justice.

Yours is the critical task we have all told you yesterday and today. We told you that because it is true. You are to seek the truth without fear, without favor, without prejudice, without bias as you promised when you came to be selected for this service yesterday.

My responsibility is relatively minor but essentially in the case, I am to give you the few rules of law that govern this proceeding and govern your deliberations. Remember, when you go to deliberate, it is the evidence that will be your concern and the inferences to be drawn from that evidence as to whether this case has or has not

1           rkh  
2       been proved with respect to either count.

3               When you go to the jury room, you will have with  
4       you a copy of the indictment for your convenience. Remember,  
5       it is not evidence.

6               You will also have with you the exhibits. They  
7       are part of the evidence and you will consider them as  
8       such. And you will have, I trust, your fresh collective  
9       recollection of the sworn testimony from the three witnesses  
10      you have heard and that is, of course, vital and central  
11      evidence in the case.

12              One of the exhibits is a stipulation, a statement  
13      of certain agreed facts and of course you may take those  
14      undisputed facts as part of the materials you consider  
15      in seeking to arrive at your verdict.

16              Mr. Etheridge in response to the indictment against  
17      him has pled not guilty. That means that the government  
18      here as you have heard has undertaken to prove his guilt  
19      beyond a reasonable doubt and you may not convict on  
20      either count unless that heavy burden has been sustained.  
21      It is a corollary, that this defendant, any defendant as  
22      I mentioned to you yesterday and repeat today, comes here  
23      armed with the presumption of innocence. That presumption  
24      will stay in his favor after those instructions and  
25      when you go to the jury room. It will be enough in itself

2 to require you to acquit unless or until you are convinced  
3 beyond a reasonable doubt that the evidence proves him  
4 guilty.

5 As some of you have lately heard and all jurors  
6 must hear each time in a criminal case some words of in-  
7 struction about the meaning of the basic proposition in  
8 our criminal law, the requirement of proof beyond a reason-  
9 able doubt. We mean by that concept, first of all what  
10 the words literally seek to convey. Proof beyond a doubt  
11 that is based on reason. Reason applied to the evidence  
12 or lack of evidence in the case before you.

13 We mean a doubt that has substance and that  
14 is not merely shadowy. We mean a doubt that takes its  
15 origin in your judgment, your collective experience and  
16 wisdom and common sense all applied as you deliberate  
17 together on the record of evidence before you. It is not  
18 a basis for an extending of sympathy to anyone. It is not  
19 a device or pretext for avoiding performance of an un-  
20 pleasant duty. A reasonable doubt is the kind of doubt  
21 that would cause a prudent person to hesitate before taking  
22 action in some matter of importance to himself or herself.

23 If you had such a serious matter to decide,  
24 and if you proceed coolly and objectively to review all  
25 the facts and all the factors that had a bearing on that

1           rkh  
2           decision, and if at the end of that kind of rational  
3           review you found yourself beset by uncertainty and unsure  
4           of your judgment, you would have what we try to identify  
5           here as a reasonable doubt and the converse of that is also  
6           true. If you had such a decision to make and you engaged  
7           in such a review of the pertinent considerations and if  
8           at the end of that you were not beset by uncertainty  
9           and unsure of your judgment, you would not have a reasonable  
10          doubt.

11                   When we speak of the requirement of proof  
12          beyond a reasonable doubt we don't mean proof beyond any  
13          doubt whatsoever or proof to a mathematical certainty.  
14          If that were meant, nobody could ever be convicted in  
15          a criminal trial, and that is because it is in the nature  
16          of questions about matters of fact and I think most clearly  
17          logical, it makes no difference about matters of fact  
18          that lie in the past, that they are not capable when they  
19          are disputed of proof beyond any possible doubt or proof  
20          to a mathematical certainty.

21                   So we don't mean that when we speak of proof  
22          beyond a reasonable doubt. At the same time, what we do  
23          mean is that in a criminal case in our system, the burden  
24          of proof upon the prosecution is a very high one and that  
25          you may convict only if your minds in the end are free

of the kind of uncertainty or reservation I have tried to describe to you.

With those basic principles in view, let's turn to the charges in this case against the defendant and the issues they present for your determination. All criminal cases in the federal court rest upon alleged violations of statutes, enactments of the Congress and no one need memorize of these statutes, but it may be helpful to you as background if I mention to you briefly the statutory provisions involved in this case.

The two counts, the two accusations against Mr. Etheridge rest upon different provisions of a section of our Criminal Code, Section 495 and I will read you the pertinent parts thereof.

As for count 1, which for shorthand I may call for the moment the forgery count. The relevant statutory language is this. The statute says: "Whoever falsely forges any writing for the purpose of obtaining or receiving from the United States any sum of money is guilty of a crime."

Then there is count 2 of the indictment, the so-called uttering or publishing count and here the statutory language I will quote to you is this:

"Whoever utters or publishes as true any such



1  
2 forged writing with intent to defraud the United States  
3 knowing the same to be forged, commits a crime."

4 As I say, count 1 rests on the first bit of  
5 statutory language I read to you. Count 2 rests on  
6 the second.

7 As you know, the first count which you have  
8 before you and it is full of language, charges that on or  
9 about April 18, 1973, the defendant wilfully and knowingly  
10 falsely forged the Treasury check payable to Delphine  
11 R. Rhodes for the purpose of obtaining a sum of money  
12 from the United States; that check being at that time  
13 a genuine obligation of the United States.

14 In order to convict on this count, the government  
15 must have established beyond a reasonable doubt each and  
16 every one of four essential elements, not all of them  
17 strictly speaking list issues for your decision but we  
18 will list them all along the way and the points at which  
19 the real dispute centers, the problems that are left  
20 for you to resolve. These four essential elements are  
21 as follows:

22 First, that the check which is the subject  
23 of the indictment and a photo of which will appear on your  
24 copy of the indictment, was a genuine obligation of the  
25 United States. That is stipulated, so that element is not



a great concern of yours.

Second, that on or about April 18, 1973, the defendant endorsed the check by writing the name of the payee Delphine R. Rhodes on the back of the check.

That as you know is the heart of the matter. The heart of the dispute with respect to count 1. Paragraph 3, that the endorsement was a forgery, and I think if you were to find affirmatively on 2, it would quite clearly follow that 3 is established in that it is stipulated that Delphine R. Rhodes didn't sign the check and didn't authorize to sign it including the defendant.

4, that the defendant acted knowingly and wilfully and intended to defraud the United States.

Elaborating very briefly on those elements insofar as it is necessary to elaborate it, let me simply state to you that under the law, probably familiar to all of you, a person who signs another's name on a check where that other is the payee of the check, commits forgery unless he has the authority of that payee to sign. That is not where the basic problem lies. There really is no contention that anybody authorized the signing. The question is, as you know, did the defendant affix that signature falsely to the back of that check. If he did, the government is also required to establish that in so

doing, he acted knowingly and wilfully. Now, those words are in the statute as I read to you and they are in the indictment. They refer to the essential element of criminal intent. They describe the kind of criminal intent necessary in a case of this nature, so they are critical, but they are not very technical and they are not abstruse or difficult in their application to this case.

We say that somebody acts knowingly and wilfully in the sense that concerns us here if the person acts voluntarily, purposely. Conscious of what he is doing and intending to do just that. He acts knowingly and wilfully if in addition he acts with a bad or evil purpose, and that means not that he is necessarily required to know the words of any statute that he may be violating, but that he must have an awareness that what he is doing is wrongful and contrary to his obligations under the criminal law. That is the kind of state of mind, in other words, with which an alleged forgery of this kind must be committed before a defendant may be convicted.

As I say, this subject of wilfulness and knowledge refers to a state of mind and state of mind, though it is a fact, it is not a fact that commonly can be got at by so-called direct evidence. You can't look at or otherwise experience with our senses

1  
2 somebody's state of mind. Therefore, whether it is for  
3 purposes of legal proceedings or other kinds of decisions  
4 that we need to make, when we are interested in getting  
5 at the state of someone's mind, his intentions, his motives,  
6 his beliefs, his knowledge or awareness, we are entitled  
7 to consider so-called circumstantial evidence. We consider  
8 the person and whatever we know about him. We consider  
9 the degree of his intelligence, education, awareness,  
10 alertness. We consider all the surrounding circumstances  
11 and from all of that circumstantial evidence we learn  
12 inferences about what the person knew, believed, intended,  
13 and you will do that here in connection with your considera-  
14 tion of the question whether if the defendant did forget  
15 that check, he did so knowingly and wilfully.

16 Then we have count 2. Relating to the same  
17 check, count 2 charges an unlawful uttering and publishing  
18 or an attempt to pass and cash that particular check.

19 Here again we define the requirements of proof  
20 in terms of four essential elements and again I will read  
21 them to you and simply remind you in the course of talking  
22 about them. What you already know, I am sure, is your  
23 basic concern in trying to decide this case.

24 The four elements, first, again that the check  
25 was a genuine obligation of the United States. Again, a

matter not in dispute.

Second, that the endorsement Delphine R. Rhodes on the back of the check was a forgery. Whether it was the defendant or someone else who wrote it.

In this second count, as you realized from the argument of counsel, it is not essential to have proved that the defendant wrote the name of that payee on the back of the check, but it is essential for the government to have established beyond a reasonable doubt that it was a forgery, that it was the unauthorized writing of someone other than the payee falsely signing her name.

The third essential element is that on or about April 18, 1973, the defendant offered the check to someone else, cash it, knowing that the endorsement was a forgery, and the fourth, somewhat overlapping the third, is the requirement of proof that the defendant acted knowingly and wilfully, and intended to defraud the United States.

Let me just say about this, that here the heart of the matter would appear to be knowledge by the defendant that the check was endorsed falsely by, and that it was forged endorsement.

An attempt by the defendant notwithstanding that knowledge to cash the check and, again, in all of this conduct, the state of mind I have talked about, action

1           rkh  
2           taken knowingly and wilfully.

3                       Again you have just heard the arguments  
4           and you know where they direct your attention. The key issue  
5           may be, did the defendant in fact present that check at  
6           that place in the Bronx at that check cashing agency on  
7           or about April 18, 1973. If he did, did he know that  
8           the endorsement was a forgery, whether he made it or someone  
9           else, and embracing that, essentially, did he act knowingly  
10          and wilfully in taking those steps on that occasion.

11                      Now, in both of the statements of the elements  
12          of these two crimes, I have stated to you that the person  
13          charged in order to be acquitted must be shown to have had  
14          an intent to defraud the United States. I instruct you  
15          that this does not necessarily require an intent to cause  
16          pecuniary loss to the United States. The government isn't  
17          required to prove that it was intended to cause the government  
18          to lose money in the ultimate results of this conduct.  
19          It is required that the prosecution prove that the unlawful  
20          activity must have been a kind that would impair the  
21          functioning of the government in the administration of  
22          its business and here the allegation in this regard is  
23          that the intended effect of this kind of conduct, forging  
24          or uttering or publishing, would be to impair the functioning  
25          of the government in the disbursement of funds for the

1           rkx  
2           payment of due and just obligations of the government  
3           to some person, some citizen or other.

4                   Now, you may well conclude or you may well  
5           have concluded already, that the essence of your task as  
6           is common with jury assignments, is to resolve questions  
7           of credibility. You have heard just three witnesses. The  
8           net result of their testimony under oath is that you have  
9           flatly contradictory stories about what actually happened  
10          on April 18th, to say nothing of what happened later on  
11          on February 6th of this year when the defendant was  
12          interviewed first by a Secret Service agent and later by  
13          an Assistant United States Attorney.

14                   You are going to be called upon to resolve these  
15          conflicts in deciding whether or not the government has  
16          sustained its purpose on either of the counts placed before  
17          you.

18                   That is what we mean when we say for shorthand,  
19          we must decide questions of credibility.

20                   That is not a technical assignment, technical  
21          in the sense of especially confided to the expertise of lawyers  
22          or judges. It is a premise of our system of legal procedure  
23          that legal people are not necessarily particularly qualified  
24          or uniquely qualified to resolve questions of credibility.  
25          That is the premise on which we call to the courthouse people



like yourselves who are laymen so far as the law is concerned to decide such key issues.

The expectation is that you will bring with you to this task your experience in the world and of people, your experience in deciding for one kind of purpose or another the kind of people you can rely on and which stories you will believe when you are considering serious questions and when you must make serious decisions about whom to believe. You engage in the same kind of analysis and study here. You want to consider the witnesses who testify and consider how they impressed you. Did the witness appear to be candid and forthright, open? Did he seem to know what he was talking about, and if he seemed to know what he was talking about, very importantly, did he seem to you to have intention to tell you accurately what he knew. Were there contradictions of any kind and if there were, how important were they.

Compare the direct examination with the cross examination. Consider as it has been suggested you should and as you probably would in any event, the interests and motives of the several witnesses. Law enforcement people may have an interest in the accounts they give of events on the witness stand. A defendant has an obvious interest in the account that he or she may give of

the facts giving rise to the prosecution.

I mentioned to you that you would wish to consider such things as interest and motive. Obviously the fact that somebody is interested in the outcome doesn't mean he is lying. If that were the case, we wouldn't let interested people testify. I mention this subject along with others simply as a reminder of the kinds of factors you will undoubtedly want to take into account in appraising the testimony and deciding the core problems of credibility.

We have told you over and over again that you are the sovereign judges of the facts. That means among other things, that if you find any witness has wilfully lied to you, it is within your exclusive judgment to decide whether you will reject all of his testimony or you may in that exclusive judgment, use such parts of the testimony as you find are believable and useful in your reconstruction of the events in your ascertainment of the truth.

When you do these things, when you undertake to resolve these issues, there will be 12 of you in the jury room and that has certain clear and obvious differences. It means that each of you will feel entitled and obliged to contribute your own thinking, your own wisdom to this joint effort at decision. It means, by the same token, that each of you will go to the jury room, prepared to listen



1 with attention and patience and courtesy to the views of  
2 your fellow jurors. If you have an opinion at some stage  
3 of the deliberations, and it later appears to you that  
4 it is wrong, you won't hesitate to change it in the exercise  
5 of a rational and honest judgment.  
6

7 At the same time, if you have an opinion and  
8 it does reflect your honest judgment, you won't feel  
9 obliged to even permit it to change it just because you  
10 happen to be outvoted at any particular time.

11 I think you know that in order to reach a verdict  
12 either way on either count, you must be unanimous, but  
13 the unanimous verdict of a jury must represent in the  
14 end the individual judgment and conscience of each member  
15 of that jury.

16 If while you are deliberating you have any  
17 problems, you need to hear any of the testimony or hear  
18 any repetition of these relatively brief instructions or  
19 if you have any other problems, send us a note through  
20 your forelady and we will undertake to assist you in  
21 whatever way we can.

22 If you are sending a note at any time and you  
23 happen at that point to be divided in your vote, don't  
24 tell us what the division is. That is a private matter  
25 for the jury and we are not to intrude on that.

1  
2 There are two counts. If and when you reach  
3 a verdict you will be asked separately to state it on  
4 each of those counts. If you were to reach a verdict on  
5 one and not the other and you wish to report that one,  
6 you may let us know that and you may do that.

7 The practice in this court normally is to have  
8 verdicts delivered orally and not in writing so when you  
9 have a verdict, let us know and we will then take it  
10 orally from your forelady.

11 Before I excuse our alternates, let me inquire,  
12 are there exceptions, gentlemen?

13 MR. SUSSMAN: The government has no exceptions.

14 MR. SOLOMON: None.

15 THE COURT: In that case, since the 12 jurors  
16 first selected have survived so well, Mr. Weinflash  
17 and Mr. Watt, it comes time for me to excuse you and I will  
18 not excuse you with a long speech except to thank you for  
19 your service in this case.

20 Now if we may have the marshals sworn.

21 (Marshals sworn)

22 THE COURT: All right, ladies and gentlemen,  
23 if you will proceed with the marshals to the jury room.

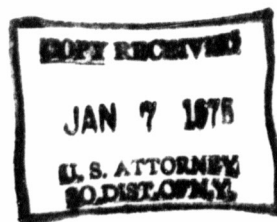
24 (At 12:20 P.M. the jury commenced deliberations.)  
25

Court's Comment

"Well, they didn't believe you, Mr. Etheridge and they were unanimously convinced beyond a reasonable doubt that you were guilty."

"I think I ought to tell you man to man, for what it is worth, that I didn't believe you either, and I would have convicted you too."

..."Now, I don't really have to retry that because that is the jury's business, but I will tell you that I may well be influenced by my belief that you were lying, when you were on the witness stand and that you are not being honest with the Court now."



PAUL J. CURRAN